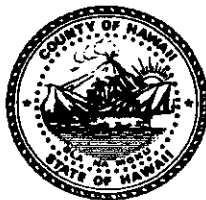


William P. Kenoi
Mayor



BJ Leithead Todd
Director

Margaret K. Masunaga
Deputy

County of Hawai'i

PLANNING DEPARTMENT

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawai'i 96720
Phone (808) 961-8288 • Fax (808) 961-8742

May 25, 2010

Ms. Dale Miller
6677 Norcliff Drive
Sebastopol, CA 95472

Dear Ms. Miller:

**Subject: Special Management Area Use Permit Assessment Application (SAA 10-000551)
Special Management Area Minor Permit No. SMM 10-000152**

Applicant: Dale Miller

Request: "As-built" Walls and New Wall Addition

Tax Map Key: 1-4-10:39, Kapoho Beach Lots Subdivision, Kapoho, Puna, Hawaii

This is to follow up on our April 16, 2010 letter relating to the above-referenced Special Management Area Use Permit assessment for the "as-built" walls and new wall addition on the subject parcel. Also acknowledged is a site inspection conducted by staff on April 23, 2010, receipt of Island Boundary survey on May 14, 2010 and email on May 20, 2010.

This 9,164 square foot parcel is zoned Single-Family Residential (RS-10) by the County and designated Urban by the State Land Use Commission. Denoted on the survey was a pond at the rear of the property.

In reference to the survey, it appears that two unpermitted chain link fences were installed on the property. One is mauka and the other is makai of the pond.

Both chain link fences will be removed and a new 6-foot high stone wall will be constructed at the rear of the property.

According to Chapter 205A-22, Hawai'i Revised Statutes (HRS), and Planning Commission Rule No. 9-4(e)(1)(B) relating to Special Management Area, the "as-built" walls and new wall addition does not qualify as exempt from the definition of "development". Therefore, a Special Management Area Minor Permit is required.

Ms. Dale Miller
Page 2
May 25, 2010

For this reason and pursuant to Planning Commission Rule Section 9-10(E), Special Management Area Minor Permit No. 10-000152 is hereby issued for the "as-built" walls and new wall addition on the parcel, subject to compliance with the conditions of approval.

We would like to remind you, however, that any clearing or development within the pond will require approval from the U.S. Army Corps of Engineers.

Should you have questions, please feel free to contact Esther Imamura of this department at 961-8139.

Sincerely,


BJ LEITHEAD TODD
Planning Director

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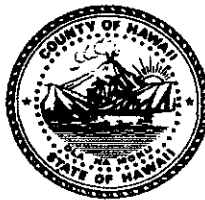
Enclosures: SMM No. 10-000152
Department of Public Works April 28, 2010 Memo

cc w/Encls: Long Range Planning Division
Planning Division

Mr. George Young
Chief of Regulatory Branch
Honolulu Engineers District
Building 230
Ft. Shafter, HI 96858

cc ltr only: Mr. Abbey S. Mayer, Director
State of Hawaii, Office of Planning
Department of Business, Economic Development & Tourism
P.O. Box 2359
Honolulu HI 96804

William P. Kenoi
Mayor



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Special Management Area Minor Permit No. 10-000152

Project: "As-Built" Walls and New Wall Addition
Applicant: Dale Miller
Land Owner: Dale Miller
Location: Kapoho Beach Lots Subdivision, Kapoho, Puna, Hawai'i
TMK: 1-4-10:39 **Land Area:** 9,164 sq. ft.

Applicant's Request

1. Project Description:

This application is for the two "as-built" lava rock walls along the front of the parcel and for the proposed new lava rock wall at the rear of the property. A survey of the subject property revealed two low chain link fences, one mauka and one makai of the pond. Both unpermitted chain link fences will be removed.

2. Purpose of Project:

The "as-built" approximately 4'+ high rock walls were constructed along Laimana Avenue by a previous owner. The proposed 6' high rock wall at the rear of the property will be installed at the top of the bank to protect children from accidentally falling into the pond.

3. Project Valuation: \$3,000.

4. Determination:

Hawaii Revised Statutes Chapter 205A and Planning Commission Rule 9-4(e)(1)(B) states that "Development" includes "*Construction, reconstruction, demolition, or alteration of the size of any structure*". Therefore, the "as-built" rock walls and proposed new rock wall addition require a Special Management Area (SMA) Minor Permit.

State and County Plans

- 1. State Land Use District:** The subject property is designated Urban.
- 2. General Plan:** The General Plan Land Use Pattern Allocation Guide (LUPAG) Map designates the subject property as Low Density Urban.
- 3. County Zoning:** The subject property is zoned Single-Family Residential (RS-10).

4. **Special Management Area (SMA):** Although the subject property is located in the SMA, it does not have frontage along the coastline and is mauka of Laimana Avenue. Further, the new wall will be at the top of the bank that surrounds the pond.
5. **Flood Zone:** "X"

<p align="center">Compliance with Objectives and Policies of Chapter 205A, Hawaii Revised Statutes (HRS), Regarding the Special Management Area</p>
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The subject property does not have frontage along the coastline and is mauka of Laimana Avenue. Therefore, the "as-built" rock walls and proposed new rock wall do not affect the recreational resources available to the public.

Check all objectives and policies found to be consistent with the "as-built" improvements. Issuance of SMA Minor Permit requires that activity be consistent with all objectives & policies.

The "as-built" and new improvements are consistent with the following objectives and policies:

- ☒ Development will not have any significant adverse environmental or ecological effect, except as such adverse effect is minimized to the extent practicable and clearly outweighed by public health, safety, or compelling public interest. Such adverse effect shall include, but not be limited to, the potential cumulative impact of individual developments, each one of which taken in itself might not have a substantial adverse effect and the elimination of planning options.
- ☒ The "as-built" and new improvements are consistent with the Hawaii County General Plan and the Zoning Code.
- ☒ The "as-built" and new improvements do not conflict with the following objectives of Chapter 205A, HRS, to:
 - ☒ Provide coastal recreational opportunities accessible to the public.
 - ☒ Protect, preserve, and where desirable, restore those natural and man-made historic and pre-historic resources in the coastal zone management area that are significant in Hawaiian and American history and culture.
 - ☒ Protect, preserve, and where desirable, restore or improve the quality of coastal scenic and open space resources.
 - ☒ Protect valuable coastal ecosystems from disruption and minimize adverse impacts on all coastal ecosystems.
 - ☒ Provide public or private facilities and improvements important to the State's economy in suitable locations.
 - ☒ Reduce hazard to life and property from tsunamis, storm waves, stream flooding, erosion, subsidence and pollution.
 - ☒ Improve the development review process, communication, and public participation in the management of coastal resources and hazards.
 - ☒ Stimulate public awareness, education, and participation in coastal management.
 - ☒ Protect beaches for public use and recreation.

- ☒ Promote the protection, use, and development of marine and coastal resources to assure their sustainability.
- ☒ The “as-built” and new improvements are consistent with the following policies of Chapter 205A, HRS, relating to:
 - ☒ Recreational Resources
 - ☒ Historic Resources
 - ☒ Scenic and Open Space Resources
 - ☒ Coastal Ecosystems
 - ☒ Economic Uses
 - ☒ Coastal Hazards
 - ☒ Managing Development
 - ☒ Public Participation
 - ☒ Beach Protection
 - ☒ Marine Resources
- ☒ The “as-built” and new improvements conform to the requirements of Chapter 343, HRS, regarding Environmental Impact Statements.

Findings

As discussed above, the “as-built” and new improvements do not have any significant adverse environmental or ecological effect, except as such adverse effect is minimized to the extent practicable and clearly outweighed by public health, safety, or compelling public interest.

The “as-built” and new improvements are consistent with the Hawaii County General Plan and Zoning Code.

The “as-built” and new improvements are consistent with the objectives, policies, and SMA guidelines of Chapter 205A, HRS.

The estimated cost of approximately \$3,000 is not in excess of \$125,000.

Upon review of the enclosed April 28, 2010 memorandum, the Department of Public Works, Engineering Division stated the following:

“We have reviewed the subject application for compliance with Chapter 27, Floodplain Management, forwarded by your memo dated April 16, 2010 and have no objections to the request.

The subject parcel is in an area designated as Zone X on the Flood Insurance Rate Map (FIRM) by the Federal Emergency Management Agency (FEMA). Zone X is an area determined to be outside the 500-year floodplain.

Walls of heights greater than six feet will require a building permit. Questions regarding the building permit process may contact the Building Division at 961-8331.”


Pursuant to Planning Commission Rule Section 9-10(E), **Special Management Area Minor Permit No. 10-000152** is hereby approved to allow for the "as-built" walls and the new wall addition, subject to the applicant's compliance with the conditions of approval as specified below.

Conditions of Approval

The Planning Director has approved **SMA Minor Permit No. 10-000152** subject to the following conditions:

1. The applicant, its successors or assigns shall be responsible for complying with all stated conditions of approval.
2. The applicant shall comply with all applicable requirements of the State Department of Health and the County Department of Public Works and applicable requirements of other affected agencies.
3. The proposed work shall be completed within one (1) year from the date of this permit.
4. U.S. Army Corp of Engineers approval is required prior to any work within the pond.
5. An extension of time for the performance of the conditions contained herein may be granted by the Planning Director upon the following circumstances:
 - a) The non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicant, successors or assigns, and that are not the result of their fault or negligence;
 - b) Granting of the time extension would not be contrary to the original reasons for the granting of the permit; and
 - c) The time extension granted shall be for a period of not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended up to one additional year).
6. Should any of the conditions not be met or substantially complied with in a timely fashion, the Planning Director shall initiate procedures to revoke the permit.

APPROVED:


BJ LEITCH TODD

MAY 26 2010

Date

2010 APR 28 PM 1:51

DEPARTMENT OF PUBLIC WORKS
COUNTY OF HAWAII
HILO, HAWAII

DATE: April 28, 2010

Memorandum

TO: BJ Leithead Todd, Planning Director

FROM:  Department of Public Works

SUBJECT: **SMA USE PERMIT ASSESSMENT APPLICATION (SAA 10-000551)**

Applicant: Dale Miller

Request: "As-Built" Walls and New Wall Addition

Location: Kapoho Beach Lots Subdivision, Kapoho, Puna, Hawaii

Tax Map Key: 1-4-10: 039

We have reviewed the subject application for compliance with Chapter 27, Floodplain Management, forwarded by your memo dated April 16, 2010 and have no objections to the request.

The subject parcel is in an area designated as Zone X on the Flood Insurance Rate Map (FIRM) by the Federal Emergency Management Agency (FEMA). Zone X is an area determined to be outside the 500-year floodplain.

Walls of heights greater than six feet will require a building permit. Questions regarding the building permit process may contact the Building Division at 961-8331.

Other questions may be referred to Kelly Gomes at 961-8327.

